



Federal Communications Commission

Docket No. 04-191 Exhibit No. 6

Presented by SFUSD

Disposition { Identified 5/24/05  
Received 5/24/05  
Rejected \_\_\_\_\_

Reporter E. Stodnik

Date 5/24/05

October 4, 1997

To: Ernie Sanchez  
From: Jeff Ramirez  
Sub: Test of List

Ernie, I subjected the list of "basis to deny" to the three-pronged test you suggested.

Is it right? Is it required? Does it matter?

In regard to FCC public file requirements I referred to the guidelines contained in the NPR station manager's handbook, which were more concise than the guidelines I had previously referred to in the Broadcasting and Cable Yearbook.

Here are the initial results.

1. Yes. Yes. Yes. Will correct with explanation
2. Yes. Yes. Yes. Will correct with explanation.
3. Yes. Yes. Yes. Will correct with explanation
4. a. Don't know. Don't know. Don't know.  
b. Don't know. Don't know. Don't know
5. No. Yes. Yes.
6. a. Not sure. Not sure. Not sure.  
b. Not sure. Not sure. Not sure.
7. No. Yes. Yes.
8. No. No. No.
9. No. No. No.
10. Yes. No. No.
11. Yes. No. No. Irrelevant?
12. Yes. No. No. Irrelevant?
13. Yes. No. No. Irrelevant?
14. Yes. No. No. Irrelevant?
15. No. No. No. Irrelevant?
16. No. No. No. Irrelevant?
17. No. No. Not sure.
18. Not sure. Not sure. Not sure.

19. Not sure. Not sure. Not sure.

20. Not sure. Not sure. Not sure.

21. No. No. No. Irrelevant?

22. Irrelevant ?

23. Not sure. Not sure. Not sure.

24. Not sure. Not sure. Not sure.

25. Not sure. Not sure. Not sure.

26. Irrelevant?

27. Irrelevant?

28. Irrelevant?

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Berchenko &amp; Korn

415-362-4119

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07/29/1997 20:15 FROM PAUL JACOBIS 415 541 3133 TO 3624119

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**BASED FOR A PETITION TO DENY KALW'S LICENSE RENEWAL****Producers Statements on KALW's License Renewal Application****Page 3 Questions:**

- 1 1(a)—Have the Broadcast Station Annual Employment Reports as required by 73.3072 been filed with the Commission?—checked YES.
- ⇒ Employment Reports from 1988 and 1989 are not in the station's public inspection file and may not have been filed with the commission.
- 2 1(b)—Have the applicant's Ownership Report as required by 73.3016 been filed with the Commission?—checked YES.
- ⇒ Supplemental Ownership Reports (SOS-2), since January 1991, are not in the station's public file and may not have been filed with the commission. The membership of the Board of Education has changed frequently since that time.
- 3 2—Has the applicant placed in its public inspection file at the appropriate time the documentation required by 73.3087?—checked YES.
- ⇒ Quarterly station reports are not on file after 5/91. A sample list of issues, from 5/5/95 to 7/7/97, was placed in the file in late July for the purpose of license renewal.
- ⇒ Donor lists have not been placed in the public file throughout the renewal period.

733612 will take corrective action if this is so

78.3615

**Equal Opportunity Program Report, Page 3:**

- 4 II. Policy Dissemination—Station are posted informing applicants and employees that the station is an Equal Opportunity Employer and that they have the right to notify an appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.
- ⇒ EEO notices have not been posted during the 91-97 renewal period. The current EEO notice, posted 8/19/97, states only that SFPLNO is an Equal Opportunity Employer.
- ⇒ Employees of SFPLNO have not been informed of openings. These positions are as follows: Youth Program Manager 10/95, Underwriting Coordinator 8/96, General Manager 7/95, and Operations Manager 8/95.
- 5 II. Policy Dissemination—Our station's employment application form contains a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State, or Federal agency if they believe they have been the victims of discrimination.
- ⇒ The applicants for the position of General Manager in 8/95 were not given EEO notices.
- 6 II. Policy Dissemination—We open the cooperation of the union represented at the station to help implement our EEO program and all union contracts contain a nondiscrimination clause.
- ⇒ The station actively works cooperating with the union, SILEU 790, which operates in conjunction with Civil Service. KALW shares the Provisional classification, meant for temporary or emergency positions, which permits KALW to ignore regular Civil Service rules.
- ⇒ KALW has evaded SILEU agreements and Civil Service rules by hiring full-time personnel as independent contractors.
- 7 III. Recruitment—When we place employment advertisements with the media some of such advertisements are placed with the media which have significant circulation or viewership, or are of particular interest to minorities and women in the recruitment area.
- ⇒ The positions of Youth Program Manager, Underwriting Coordinator, General Manager, and Operations Manager were created and filled without placing advertisements with any media.

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FROM PAUL JACQUES 415 641 8193

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#### Other EEO Issues

- 8 => In 8/97 an SFUSD/KALW manager promised a job (Development Director) that had not yet been created to a friend. In 8/97 KALW management presented to the Board of Education Service Contract No. 75-30621 to hire that friend to full-time employment. No EEO rules were followed in the hiring process.
- 9 => In 8/96 SFUSD/KALW attempted to terminate an employee and withheld her paycheck because of his disability (AIDS).
- 10 => In 8/93 an SFUSD/KALW manager was investigated for sexual harassment.

#### Other Public Inspection File Problems

- 11 => Letters from the public (73.1202) have not been filed throughout the renewal period. Letters expressing displeasure with SF station, since 8/95, are kept by the General Manager.
- 12 => Program Sponsor Lists (73.1213) have not been filed since 8/91.
- 13 => Contracts (73.3013) with employment consultants have not been filed in the renewal period.
- 14 => Network affiliations and lists of program suppliers (73.3013 and 73.4219) not on file after 8/92.

#### Fundraising Fraud

- 15 => It has been a KALW practice throughout the renewal period to call donors and ask to use their names in a challenge fund. During pledge drives, the station fabricates—on air—the scenario that a donor just asked to challenge other stations to call in and pledge a certain amount by a certain time, and that if the amount raised by the deadline is not reached, the donor will demand his or her money back. About \$25,000 per year has been raised this way.
- 16 => During challenge periods, if the amount desired by the station is reached before the deadline, it is station practice to terminate challenge in order to minimize soliciting.

#### FCC Radio Community Service Grants Certification of Eligibility

- 17 Criterion 3—The station employs a minimum of five full-time professional radio staff on an annual basis. Full-time, professional radio station staff includes permanent personnel with demonstrated skill and expertise in the management, programming, production, promotion, development or engineering areas of radio station operations—checked YES.
  - => To qualify for the Radio Community Service Grant in 1995, SFUSD/KALW presented a Chris/Tyler to Operations Manager. The person occupying the position does not meet the requirements stated in Criterion 3, but is still claimed to qualify for funding.
- 18 Criterion 8—The station and its licensee comply fully with the Federal Communications Commission's regulations concerning equal employment opportunity—checked YES.
  - => SFUSD/KALW did not have, and still has, an EEO Program
  - => SFUSD/KALW's hiring practices violate FCC EEO rules.
- 19 Criterion 10—The job openings identified in the employment portion of the licensee's and its station's Annual Station Audited Survey were filed in accordance with Federal Communications Commission's regulations concerning equal employment opportunity—checked YES.
  - => Since 1994, five positions have been filled in violation of FCC EEO rules.

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- 30 Criterion 11, Open Records--(7 USC 552(a)) Requiring that copies of the recipient's annual financial and asset reports, and other information regarding finances submitted to CPE, be made available to recipient for public inspection--checkbox YES.

=> Financial records submitted to CPE have not been filed and are not on file.

CPE Final Audit Reports (Schedule A-1, Narrative and Finding Criteria for Institution as NPPS

- 21 Line 6--Lossing of BGA, VGR, TTP's showed--KALW reported no revenue throughout the renewal period.

=> Since Broadcasting owns SFUSDKALW's BGA at about \$48,000 annually.

#### Auditor's Reports

- 22 Auditors have consistently reviewed the financial statements presented fairly the financial position of KALW each year of the renewal period.

=> KALW does not have a history of income received and payable. Management has little accounting control, using bookkeeping and guesswork to manage KALW financially.

=> For FY88, the auditor reported to the Internal Department, quote, KALW management does not have a report on the financial condition of KALW's operation on a periodic basis.

NTIA: PTFP Award Reporting Provisions SFUSDKALW received a \$70,000 grant from NTIA (Grant # 08-01-00294) in 1988 for the purchase of on-air and production audio equipment. The Federal interest period expires in 2000.

#### PTFP Rules Support D--Accountability for Federal Funds

- 23 Retention of records (48 CFR 101-11.6) (1) Each recipient of assistance under this program shall keep, index and account, maintain and ensure logical records that fully disclose the total amount of the project, the amount of the grant, the disposition of the grant proceeds; and the amount, nature and source of non-Federal funds contributed with the project; and, all records specified in Office of Management and Budget Circular A-119 and 16 CFR part 24.

=> SFUSDKALW has not kept these records intact and accessible.

- 24 Annual Status Report for non-Federal funds (2001.21)--(a) Recipients of construction grants are required to submit an Annual Status Report for each grant project that is in the Federal interest period. The reports are due on or before April 1 in each year of the period--(b)(7)(D) In addition, the grant recipient must provide information as to whether any disbursement complaints are pending against it and whether, during the reporting period, any adverse judgments have been rendered against it because of disbursement problems--(c) If the recipient is a non-profit institution, or a college or university, disbursement complaints and adverse judgments must be reported for the entire organization, not just for the educational institution.

=> Annual Status Reports are not filed publicly and may have not been filed with NTIA.

- 25 (2001.21)--(b)(4) In addition, the grant recipient must take whatever steps may be necessary to ensure that the Federal government's exclusivity interest continues to be protected for the 10-year period by recording, when and where required, a full continuation statement and reporting that fact in the Annual Status Report.

=> The State of California Bill on the subject passed in 1988. SFUSDKALW failed to secure, and continue to operate without, a bill.

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#### KALW Task Force 1996 Report

- 26 The KALW Task Force was formed by the licensee to examine the station's problems and make recommendations. Their report in the winter of 1996 found that the licensee was unable to adequately govern KALW. They concluded:
- Superintendent Baker concluded in 1996 and wrote a letter that SFUSD could no longer afford to make direct financial contributions to the station's budget.
  - ...the Board of Education has been hit with cuts of the time and energy needed to govern KALW. As a result, no member has had time and energy to complete the recommendations of the Board on, they have failed to take the steps to ensure that the educational and public broadcasting activities of KALW become reality.
  - Remaining without an active governance structure is the worst possible scenario for the future of KALW.
- 27 The Task Force recommended that the Board of Education of SFUSD form a nonprofit corporation to govern KALW. The Task Force recommended that the Board:
- "...have in place a minimum KALW Board of Directors of five (5) by May 30, 1998."
  - The Board has not acted on the Task Force's recommendations and KALW remains without an active governance structure.

#### OSHA Inspection and Citation

- 28 SFUSD/KALW was inspected (OSHA) and cited by OSHA for failures to adequately secure KALW from Type One violations.
- Upon the move to their facilities at Sutter High School in 1996, employees made known to SFUSD/KALW the need for OSHA security measures such as an illuminated parking area, a guardrail, and an alarm system. SFUSD/KALW took as long as eight months to correct the problems.

#### Other Licensee Expenses

- Legal action regarding SFUSD/KALW's lack of responsiveness to security problems is being considered, not by SFUSD or any of its members, but by employees.
- Legal action regarding SFUSD/KALW's failure to inform minority employees of positions of advancement within the station is being considered, not by SFUSD or any of its members, but by employees. A notice of intent to sue is being filed by said employees.

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## III. ADMINISTRATIVE AND NON-TECHNICAL REQUIREMENTS

## Public Inspection File

## Location of Files - All Stations Rule: 73.3526, 73.3527

If the main studio of the station is located within the **community** of license, then the public file must be located at the studio. If the station obtained a written authorization to maintain the studio outside the community of license prior to July 16, 1987, then the file may be maintained at the main studio or within the community of license. For all other stations, including combined facilities licensed to more than one community, the public file must be maintained at any publicly accessible place within the community of license. The file shall be available for public inspection at any time during regular business hours.

Make certain that the location of the file is disclosed upon request, including telephone inquiries, and that the entire contents of the file are made available without asking the requesting party for any more information than name and address. If a station is concerned about documents being stolen or destroyed, then copies of required documents may be placed into the file in lieu of the originals. The contents of the file are to be made available within a reasonable time for machine reproduction upon request made in person, provided the requesting party pays the reasonable cost of reproduction.

## Applications - All Stations Rule: 73.3526(a)(1&amp;2), 73.3527(a)(1&amp;2)

The public file is to contain copies of all applications, exhibits, letters, initial and final decisions in hearing cases, and other documents pertaining to the station which were filed with the Commission and which are open for public inspection at the FCC.

## ✓ Ownership Reports - All Stations Rule: 73.3526(a)(3), 73.3527(a)(3)

With the exception of sole proprietorships, the file must contain copies of annual ownership reports and supplemental ownership reports filed with the Commission, including all exhibits, letters, and other documents associated with these filings. **Noncommercial stations should check for any changes to the board members or officers and file a supplemental report if any such changes have occurred since the last date of filing.** This material is to be retained in the file for 7 years for radio stations, unless instructed otherwise.

Political Ads - All Stations Rule: 73.1943, 73.3526(a)(4), 73.3527(a)(4)

Every licensee shall keep a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the file. All records are to be placed in the file as soon as possible and retained for a period of two years.

✓ Employment Reports - All Stations Rule: 73.3526(a)(5), 73.3527(a)(5), 73.3612

Stations employing five or more full time employees must file an annual employment report on FCC Form 395 on or before May 31 of each year and place copies of each report in the public inspection file. These reports are to be retained for 7 years for radio stations, unless instructed otherwise.

✓ Issues-Programs Lists - All Stations Rule: 73.3526(a)(8), 73.3526(a)(9), 73.3526(e), 73.3527(a)(7)

All stations, with the exception of certain exempt non-commercial stations, are to maintain a list of programs that have provided the stations most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (e.g. January 10, April 10, July 10, & October 10). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs should include, but is not limited to, the time, date, duration and title of each program in which the issue was treated. These lists are to be retained for the term of the license.

7 Donor Lists: Non-Commercial Stations Rule: 73.3527(a)(8)

The public file must contain lists of donors supporting specific programs. The lists are to be retained for two years.